



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** FBS Communications, Inc.--Entitlement to Costs

**File:** B-270130.3

**Date:** December 18, 1995

### DECISION

FBS Communications, Inc. requests that our Office declare it entitled to reimbursement of the costs of filing and pursuing its protests challenging the award of a contract to Optical Technologies Corp., under request for proposals No. DAKF49-95-R-0001, issued by the Department of the Army.

FBS filed two protests with our Office. Its first protest (B-270130) was filed October 10, 1995, and its second protest (B-270130.2) was filed October 18. On October 26, the Army informed our Office that it was terminating Optical Technologies's contract. On October 30, we dismissed the protests, finding that the termination rendered the protests academic. FBS now requests that we find it entitled to the costs of filing and pursuing its protests.

Where an agency takes corrective action prior to our issuing a decision on the merits, we may declare the protester entitled to recover the reasonable costs of filing and pursuing the protest. Bid Protest Regulations, section 21.8(e), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(e)). We will find a protester so entitled, however, only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. A protester is not entitled to costs where, under the facts and circumstances of a given case, the agency has taken reasonably prompt corrective action. Id.

There is no basis to conclude that FBS is entitled to recover its protest costs, even if we assume that FBS' protests were clearly meritorious. Specifically, the initiation of corrective action by the agency on October 26, approximately 2 weeks before the agency report on FBS' initial protest was due, did not constitute undue delay. PLX, Inc.--Entitlement to Costs, B-251575.2, Mar. 10, 1993, 93-1 CPD ¶ 224. The purpose of section 21.8(e) (formerly section 21.6(e))--to encourage agencies to take corrective action in response to meritorious protests before protesters have expended additional unnecessary time and resources pursuing their claims--was served here. See 55 Fed. Reg. 12,838 (1990). Indeed, the agency has not filed any of the reports on the protests to which FBS was required to respond, and there is no indication in the record that FBS took any other action in pursuit of its protests

9351211

065374/155861

between the time it filed its second protest and the time it learned of the agency's corrective action.

The request for a declaration of entitlement to costs is denied.

Comptroller General  
of the United States